No. 5725.

IN THE

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Southern California Utilities Inc., a corporation,

Appellant,

vs.

City of Huntington Park, a municipal corporation; the City Council of the City of Huntington Park; J. V. Scofield, as Mayor of said City of Huntington Park; J. V. Scofield, Otto R. Benedict, Elmer E. Cox, John A. Mosher and John C. Flick, as members of said City Council of Huntington Park, and C. H. Merrill,

Appellees.

CLOSING BRIEF FOR APPELLANT.

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I.

In Order That We May Bring Out Clearly the Only Matters Here at Issue, It Is Desirable to Point Out That Certain Important Questions Which Frequently Arise in Franchise Cases Are Not Present in This Case.

They are:

(1) No question of police power is involved.

(2) No question of the reserved right to alter, amend or repeal is involved.

(3) The power of the authority granting the franchise is not called in question.

(4) The power of either the county or the city to grant similar rights to other private agencies is not questioned.

II.

The Following Propositions Are Conceded by Appellees in Their Brief.

1. The County of Los Angeles did not have power to engage in the proprietary operation of furnishing water to its inhabitants at the time of the franchise grant in 1903.

2. Appellant's rights and privileges under the franchise were in nowise diminished by the annexation of the Fruitland District to the City of Huntington Park.

III.

Once It Is Conceded That Appellant Possesses a Franchise in the Fruitland District, It Necessarily Follows That It Must Possess the Precise Franchise Granted by the County in 1903.

Under this franchise the county is excluded from furnishing water in a proprietray capacity to the inhabitants of the Fruitland District, since, on the authority of the *Madera* (228 U. S. 452) and *Knoxville* (200 U. S. 22) cases, the lack of capacity of the county to engage in such business entered into and formed a part of the franchise contract as effectively as if the contract had contained an express covenant on the part of the county not to engage in such business during the term of the grant.

This obligation of the contract could not be diminished or impaired by the annexation of the Fruitland District to the City of Huntington Park.

Appellees, while conceding that the rights of appellant could not be thus diminished, seek to avoid the effect of the franchise obligation by arguing that, since at the time of the grant in 1903 municipalities had the power to furnish water to their inhabitants, and since at that time there was statutory authority for the annexation by municipalities of unincorporated territory, the grantee assumed the risk of competition by a municipality that might through subsequent legislation come into existence within the franchise area. In other words, that such a grant might be exclusive against the county, but not exclusive against any city thereafter securing political control over the territory in question.

The fallacy of this argument is that it would bring about the very result which the federal constitutional prohibition against the impairment by a state of the obligation of a contract was designed to prevent. It would be equally as logical to say that the county might thereafter engage in such competition if, through subsequent legislation, it was authorized to carry on such business. Thus, the constitutional inhibition would become a hollow mockery—powerless to protect the sanctity of contract rights.

The county is the agency of the state for the administration of local self-government. The state could have authorized the county, as a proprietor, to furnish water to its inhabitants, or it could authorize the county to grant to private agencies the use of public thoroughfares for

that purpose, or it could have authorized the county to employ both of these means. In 1903, however, the settled policy of the state was that a county might grant such rights to an individual or a private corporation, but it could not itself furnish water to its inhabitants. Under this state of the law appellant's franchise is a contract binding upon the people residing within the area covered by the grant, and one of the obligations of this contract is that the people will not, through the agency administering local self-government, engage in destructive competition with the grantee of the right. The effect of this obligation cannot be avoided by a mere change in the form of local self-government. It was the fear of just such political changes that caused the framers of our Federal Constitution to include in that document the prohibition against the impairment of the obligation of a contract.

Respectfully submitted,

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